



DDA 75-1168

18 MAR 1975

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : FOIA Appeal Decision Procedures

1. The CIA Information Review Committee (the body established to serve as the departmental appeal body for the Agency and whose membership consists of the four line deputies and the deputies for IC and NIO) held its first meeting on 5 March. The FOIA regulations which were published in the Federal Register were written to provide us with the greatest possible flexibility for developing rules to govern the operations of our appeal body and, thus, much of the first meeting was taken up with a discussion of proposals for these rules.

2. Two alternate methods for the handling of the basic legal decisions relating to appeal cases were discussed. The first of these methods would involve the Committee acting as a corporate body and determining by the simple majority vote of its members whether or not to grant or deny an appeal. The second method would have the Committee select one of its members (normally that member whose position, background and experience are such that he is best qualified) to render a decision in a particular case. Under this method, after the decision-maker has been selected, the other Committee members would serve only an advisory function in assistance to him in his decision-making process.

3. There are certain advantages and disadvantages to each of the above methods of approach. In the first, i.e., the majority vote, the decision would be made by six senior, experienced Agency officials whose collective judgment can be assumed to exceed the judgment of any one individual. Also, by using the corporate body approach to the decision, you avoid asking one officer to assume the total responsibility for an action which may have serious ramifications for both the Director and the Agency. However, this approach has the major disadvantage of potentially putting us in a position of having to send a committee to testify in court regarding a decision. Several feel that this could weaken a court case because there might not be consistency or uniformity in the testimony of the individual Committee members and it is Mr. Warner's strong opinion that we would seriously weaken our case in a court if there were to be such a thing as a 3-2 vote to deny.

4. The second approach, i.e., the selection of an individual decision-maker, clearly eliminates the problem of uniformity of testimony in court. It also provides the opportunity for the appeal decision to be made solely by an individual qualified to do so and would obviate the need for the entire membership of the Committee to spend the very considerable amount of time which will be required of the decision-maker in the review of the more complex cases. The other side of the coin, however, presents us with a procedure that imposes heavy individual responsibility on the selected decision-maker. Additionally, while we do not in any way anticipate arbitrary or capricious action in our appeal process, were there to be action which was held to be such the decision-maker could be subject to personal disciplinary action.

5. At the initial IRC meeting, the consensus was that we should develop rules which continue to grant us the flexibility we have provided in our published regulations, but that as a general rule we should function under the method which calls for the selection of an individual decision-maker for each particular case. The Committee adopted rules and proceeded with its business on this basis. I feel that it is important to make you aware of the Committee's thinking on this matter so that we may benefit from guidance you may choose to provide us.

/s/John F. Blake

John F. Blake
Deputy Director
for
Administration

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